

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5466 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KUSUMBHAI BHIMABHAI HARIJAN

Versus

DISTRICT JUDGE

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Appearance:

MR IS SUPEHIA for Petitioner

Mr.P.S.Champaneri, A.G.P. Respondent No. 1

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CORAM : MR.JUSTICE S.M.SONI

Date of decision: 15/04/96

ORAL JUDGEMENT

Petitioner by this petition under Article 226 of the Constitution of India has prayed for a declaration that the Recruitment Rules prescribing qualification upto 4th standard primary school for the post of a sweeper, Class IV service, is unreasonable, unconstitutional and illegal and for a direction to strike down the same, with a prayer also to quash and set aside the order of termination dated 9.11.83 of the petitioner.

Petitioner by an order dated 28.4.82 was appointed as a part-time sweeper on a fixed salary of Rs.150/- per month. The services of the petitioner were then continued on the same post by different orders and in the last by an order, her services were continued as part-timer till further orders. By the order dated 9.11.93, respondent no.1 had terminated the services of the petitioner with effect from the afternoon of 15.11.83. This order of termination of her services is under challenge in this petition on the grounds, inter alia:-

- (1) that the rule prescribing minimum educational qualification upto 4th standard is unreasonable and irrelevant inasmuch as there is no nexus with the educational qualification and the nature of work, as the nature of work is such which does not require any educational qualification;
- (2) that the said rule suffers from the vice of inequality causing infraction of Articles 14 and 16 of the Constitution of India inasmuch as no such educational qualification is required in similar services in other departments, namely, the Police Department. It is further contended that for the post of Hamals, no qualification is prescribed which is little higher in hierarchy than the sweeper. Thus also, there is a breach of Article 14 of the Constitution of India;
- (3) that the order is bad for non-compliance of Rule 33(1B) of the B.C.S.Rs;
- (4) that no reasons for termination of services are assigned;
- (5) that the authority appointing the petitioner, though could have relaxed the Rules, has not relaxed in the case of the petitioner, though the petitioner was continued for a period of 1 year and 7 months in employment; and
- (6) that the order of termination is arbitrary, inasmuch as the same is not warranted by any necessity to terminate her services;

Respondent no.1 has filed the affidavit-in-reply in the nature of written statement, wherein all the averments and contentions, except the appointment of the petitioner on a part time basis on a fixed salary for a

specified period, are denied. It has been stated that as regular incumbent was facing the departmental enquiry and he was remaining absent, to meet with the dire necessity of keeping the premises clean, by way of a temporary arrangement, initially one Amrutbhai Zumanbhai was appointed as sweeper on a daily wage of Rs.6/-. Thereafter, in place of said Amrutbhai, the petitioner was employed, as said Amrutbhai was not regularly discharging his duty. However, the petitioner was appointed on the same terms and conditions as that of Amrutbhai. In view of the fact that the petitioner was carrying out work for 3 to 4 hours every day, predecessor in office of respondent no.1 fixed the consolidated remuneration of Rs.150/-p.m. instead of Rs.6/- per day. It is stated that the petitioner was appointed by way of temporary arrangement till the regular appointment on the permanent post of sweeper was made. Thereafter, the process for regular appointment was started and the names from the Employment Exchange were called for for preparing a select list for the permanent post of sweeper in the regular establishment of the District Court, Valsad at Navsari. The request of the petitioner to give her appointment on the regular post of sweeper was turned down. However, she was asked to apply or come through proper channel for regular employment. Thereafter, the petitioner's services were terminated. It is made clear that the petitioner was employed as a part-time sweeper on a fixed salary. The said temporary arrangement was ordered to be continued as a stop-gap arrangement by passing necessary orders in exercise of powers under the delegation of Financial powers under Government resolutions dated 18.1.71; 19.1.74 and 14.4.76. It is stated that the Heads of Departments are delegated with the power to make appointment of staff paid from contingencies upto Rs.150/- p.m. in offices with the strength of less than 30 excluding Class IV staff and upto Rs.250/- in the offices with larger strength as is evidence from item no.99 of Schedule IV of Delegation of Financial Power Rules, 1969. By a Government Resolution dated 24.3.76, monthly consolidated remuneration was fixed at Rs.150/- for working upto 4 hours. It was in exercise of this delegated authority that the predecessor in office of the respondent no.1 had appointed her as a part time sweeper on fixed remuneration of Rs.150/-. Thus, she being not a temporary Government servant, but she being a part-time sweeper on a fixed remuneration, she was not entitled to notice under Rule 33 of B.C.S.Rs. It is further stated that as she was not duly qualified both in education and age, she was not called for interview. It is, therefore, prayed that the petition be dismissed with costs.

Initially, the petitioner was appointed in the vacancy in the nature of leave vacancy as the regular incumbent had remained absent for a long period and the departmental enquiry was instituted against him. The petitioner was appointed by the predecessor in office of the respondent no.1 purely in exercise of powers delegated under the Delegation of Financial Power Rules under Government resolutions dated 18.1.71; 19.1.74 and 14.4.76. Any appointment, in my opinion, in exercise of powers delegated under the said Delegation of Financial Power Rules does not make that appointee an employee of the Government to make provisions of B.C.S.Rs. applicable. The petitioner, in view of the appointment in exercise of powers referred to hereinabove, can neither be said to be a regular Government servant or a part time Government servant; nor the Government servant of any nature referred to in B.C.S.Rs. Unless the petitioner falls in any of the nature of the Government servant covered under B.C.S.Rs, in my opinion, the provisions of B.C.S.Rs. are not applicable for the services of the petitioner, much less provisions of Rule 33 as referred to by the learned Advocate for the petitioner. Thus, it appears that the employment of the petitioner was a contractual one and not regular one, under which the Government employment is given and, therefore, the petitioner's termination cannot be said to be in contravention or in non-compliance of Rule 33 (1B) of B.C.S.Rs.

Learned Advocate for the petitioner contended that the authority i.e. respondent no.1, could have relaxed the Rules in the case of the petitioner. Rules so far as educational qualification and age are concerned, the same cannot be relaxed unless a special case is made out. In the instant case, there is nothing special on record to show that the relaxation in the case of the petitioner is called for. Continuing in service for a long period due to non-availability of a regular incumbent does not entitle a person to be regularised, if otherwise not qualified to be regularly appointed. Thus, there is no substance in the contention that the authority did not relax the Rules in the case of the petitioner.

It is alleged that the action of the respondent no.1 is arbitrary inasmuch as there was no necessity to terminate the services of the petitioner. The petitioner was not a regular incumbent. Process for regular employment on the said post had started and, therefore, it was necessary to terminate the services of the

petitioner and accordingly her services are terminated and there is nothing wrong; nor can it be said to be arbitrary one, when the authority has acted as per her condition of employment.

(This brings me to the question whether the Rule providing for educational qualification is bad on the ground of unreasonableness. Article 45 of the Constitution of India in Chapter IV pertaining to Directive Principles of the State Policy, provides provision for free and compulsory education for children. It reads as under:-

"The State shall endeavour to provide within a period of 10 years from the commencement of this constitution for free and compulsory education for all children until they complete the age of 14 years".

The Directive Principles of the Constitution of India thus provides for encouragement of education. If in employment some educational qualification, which is a bare minimum, is provided, it can be said to be in the enhancement of the Directive Principles incorporated in the Constitution of India. To hold an educational qualification provided for a particular employment considering it to have no nexus with the employment is bad, amounts to frustrating the Directive Principles of the State Policy in Chapter IV, Article 45 of the Constitution of India. When the State is directed to endeavour to provide free and compulsory education for children till they complete the age of 14 years, it suggests that they may be educated upto 10th standard in any case. In the State of Gujarat, since number of years, there is free primary and middle school education i.e. upto 7th standard. To hold that imposition of a condition providing educational qualification for an employment is bad on the ground that there is no nexus with the employment is frustrating the very policy of compulsory education. Thus, the contention of the learned Advocate that providing qualification is unreasonable is contrary to the Directive Principles of the Constitution of India and it cannot be struck down as unreasonable one.

So far as equality under Article 14 of the Constitution of India is concerned, simply because other services have not provided for educational qualification for identical post, that cannot be a ground to strike down such a rule as to qualification if provided by one Department. On the contrary, in my opinion, this petition should be an eye-opener for the said Police

Department that not providing minimum educational qualification amounts to not enforcing the Directive Principles of the Constitution of India. Simply because one department has not provided for educational qualification, the rule providing for educational qualification of other department cannot be held to be ultravires on the ground of inequality. There is no question of equality in providing minimum qualification for employment, which is in consonance and furtherance of the Directive Principles of the Constitution of India. Thus, there is no substance in this contention that the rule providing educational qualification is ultra vires Article 14 of the Constitution of India.

It is also contended that Hamals employed in this very department are not required to have any educational qualification. But simply because the educational qualification is not prescribed for a particular post, educational qualification if provided for other post does not make the subsequent post or a qualification either illegal or ultra vires. Hence, I do not find any substance in any of the contentions of ultra vires or unreasonableness of the Rules, providing for some educational qualification.)

Thus, the contentions of the petitioner are devoid of any merit.

In the result, the petition is liable to be dismissed and is hereby dismissed. Rule discharged. No costs.

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